

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	
)	DTSC Docket HWCA <u>2004 – 0425</u>
Puri Tech, Inc.)	Water Board Case # <u>WB 81902 – C76</u>
d.b.a. Everfilt	1	
3167 Progress Circle)	
Mira Loma, California 91752)	CONSENT ORDER
CAL/EPA ID No. CAL000113885)	
)	Health and Safety Code
Respondent.)	Section 25187

The State Department of Toxic Substances Control (Department), the Santa Ana Regional Water Quality Control Board (Board), and Puri Tech, Inc., d.b.a. Everfilt, (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates, handles, treats, stores, and disposes of hazardous waste at 3167 Progress Circle, Mira Loma, California 91752 (Site).
2. The Department and Board conducted an investigation of the Site during the years 2002 and 2003.
3. The Department and Board allege the following violations:
 - 3.1. The Respondent violated Health and Safety Code section 25189(d), in that on or about 08/29/2002, 01/24/2003, 03/25/2003, and on other unknown dates beginning in 1997 through 12/31/2003, the Respondent negligently disposed or caused the disposal of hazardous waste at a point which was not authorized. Specifically, Respondent is alleged to have used a low pH solution and water to clean stainless steel tanks and related stainless steel parts, and to hydrotest (i.e., leak test) stainless steel and other water tanks, which produced a liquid waste stream that did not meet the legal requirements for discharge to a public sewer system.

Respondent is alleged to have discharged the waste stream down the swale of Respondent's property and to the gutter.

3.2. The Respondent violated the California Water Code section 13376, in that on or about 08/28/2002, 09/11/2002, and on other unknown dates beginning in 1997 through 12/31/2003 the Respondent discharged pollutants to the navigable waters of the United States within the jurisdiction of the State without filing a report of discharge, without possessing a National Pollution Discharge Elimination System (NPDES) permit, and without obtaining requirement stormwater permits.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. The Department's jurisdiction exists pursuant to Health and Safety Code section 25187 and the Board's jurisdiction exists pursuant to California Water Code section 13385.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above including any and all claims of violations which could be brought by the Department or Board based on the alleged activity of Respondent as set forth above, but does not limit the Department or Board from taking appropriate enforcement action concerning other violations not covered by this Consent Order.

8. Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code

Chapter 6.5 of Division 20, and California Water Code sections 13385, 13376 and 13323 within 5 years of the effective date this Consent Order.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1. Respondent shall immediately eliminate all non-storm water related discharges from Respondent's property to the storm water system, unless an appropriate permit or authorization from an agency with appropriate jurisdiction is obtained.

9.2. Respondent shall obtain and maintain the permits necessary] through the Certified Unified Program Agency – Riverside County Environmental Health (CUPA), the South Coast Air Quality Management District] and the Board to treat, store, and dispose of hazardous waste and contaminates. Respondent shall submit a copy of permits obtained from the CUPA and the most recent inspection conducted by the CUPA within 30 days of this consent order being signed or within 30 days of Respondent's receipt of such permits, which ever occurs later. Respondent shall correct any violations as noted by the CUPA and submit within 60 days documentation to the Department and Board verifying that said corrections have been made. A failure by the respondent to correct all deficiencies noted by the CUPA, within the time frame stated above, shall constitute a breach of this agreement.

9.3. Within 90 days of the date of this Consent Order, Respondent shall clean out all soils in the grate/drainage sump leading from the Respondent's property to the street gutter. Within 90 days of the date of this Consent Order, Respondent shall have the sump repaired to prevent leakage. If Respondent completes

these works using Respondent's employees, Respondent shall submit a declaration signed under penalty of perjury that the work was so completed. If Respondent contracts to have these works performed, Respondent shall submit a work order, bill, or other documentation and a declaration from the contractor stating that the work has been completed.

9.4. Respondent hereby agrees to send Barbara J. Andrew to the California Compliance School Modules I through V. Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the date of this Consent Order. If Respondent fails to submit the Certificates as required, a stayed penalty of \$5000 becomes due and payable within 30 days after the expiration of the 185 day period. The 185 day period may be extended by the Department upon written request demonstrating good cause from Respondent.

9.5. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

To: Nennet Alvarez, Unit Chief
Department of Toxic Substances Control
Statewide Compliance Branch
5796 Corporate Avenue
Cypress, California 90630

To: Tom Donohue, Criminal Investigator
Department of Toxic Substances Control
Criminal Investigations Branch
5796 Corporate Avenue
Cypress, California 90630

To: Nancy Long
Office of Legal Counsel
Department of Toxic Substances Control
1001 "I" Street, 23rd Floor

P.O. Box 806
Sacramento, California 95812-0806

To: Gerard Thibeault, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, California 92501-3339

9.6. Communications: All approvals and decisions of the Department and Board made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief or higher designee. No informal advice, guidance, suggestions, or comments by the Department or Board regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.7. Department and Board Review and Approval: If the Department and Board determine that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department and Board may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department and Board a revised document incorporating the recommended changes.

9.8. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.9. Endangerment during Implementation: In the event that the Department and Board determine that any circumstances or activity (whether or not

pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department and Board may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.10. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims brought by the Department or Board arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as required by law to protect public health or welfare or the environment.

9.11. Site Access: Provided that Barbara Andrew or her designee is on site, access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, the Board, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department, the Board, and their authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings,

including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing in this provision shall prevent Respondent from claiming any documentary privileges provided by law (e.g. trade secrets).

9.12. Sampling, Data, and Document Availability: Respondent shall permit the Department, the Board, and their authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Nothing in this provision shall prevent Respondent from claiming any documentary privileges provided by law (e.g. trade secrets). Respondent shall allow the Department, the Board, and their authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department and Board requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department or Board, or permit the Department or Board to copy the documents prior to destruction. Respondent shall notify the Department and Board in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.13. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 11.3, in carrying out activities

pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.14. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department and Board approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department and Board.

9.15. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing to the Department and Board. The extension request shall include a justification for the delay.

9.16. Extension Approvals: If the Department or Board determine that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

10. Respondent shall pay the Department and Board a total of \$42,890, of which \$27,500 is a penalty and \$15,390 is a reimbursement of the Department's and Board's costs. \$5000 of the \$27,500 penalty amount shall be stayed pursuant to paragraph 9.4. If and when Respondent fails to comply with the provisions of paragraph 9.4 the stayed \$5000 penalty amount shall be paid in equal amounts (\$2500 each) to the Department and the Board.

10.1. Respondent shall pay to the Department \$27,000 (of which \$14,500 is a penalty and \$12,500 is for costs) and to the Board \$10,890 (of which \$8,000 is a penalty and \$2,890 is for costs). Payments shall be made in accordance with paragraph 10.5 and attachment "A."

10.2. Respondent's checks to DTSC shall be made payable to the Department of Toxic Substances Control and shall be delivered together with a copy of the Payment Voucher in attachment "A" to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

10.3. Respondent's checks to the Water Board shall be made payable to the State Water Resources Control Board, and shall be delivered with a copy of the Payment Voucher in attachment "A", and the check shall reference the Respondent's name, Respondent's address and the Water Board docket number of this Consent Order to:

Gerard Thibeault, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, California 920501-3339

10.4. A photocopy of the checks and voucher shall be sent to:

Nennet Alvarez, Unit Chief
Department of Toxic Substances Control
Statewide Compliance Branch
5796 Corporate Avenue
Cypress, California 90630

Tom Donohue, Criminal Investigator
Department of Toxic Substances Control
Criminal Investigations Branch

5796 Corporate Avenue
Cypress, California 90630

Nancy Long
Department of Toxic Substances Control
Office of Legal Counsel
1001 "I" Street, 23rd Floor
P.O. Box 806
Sacramento, California 95812-0806

Jorge A. Leon
Senior Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, California 95814

10.5. Respondent agrees to make 12 quarterly payments, over a three year period of time, in accordance with the schedule set forth in the attached voucher (Attachment A). The first payment is due May 31, 2004. Subsequent payments are due on the first day of the month every three months thereafter, as established in attachment A.

10.6. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department and Board in pursuing collection including attorney's fees.

OTHER PROVISIONS

11.1 Additional Enforcement Actions: By agreeing to this Consent Order, the Department and Board do not waive the right to take further enforcement actions for activities of Respondent not covered by this consent order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages

for any costs incurred by the Department, the Board, or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.3. Patties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order, and upon the Board and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is last signed by either the Department or Board.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

11.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

Dated: 5, 14 / 04

ORIGINAL SIGNED BY:

Baybara J. Andrew, Owner
Puri Tech, Inc., d.b.a. Everfilt

Dated: 5-25-04

Original Signed by:

Mary Locke
Chief Criminal Investigator
Department of Toxic Substances Control

Dated: 5/20/04

ORIGINAL SIGNED BY:

Gerard Thibeault
Executive Officer
Santa Ana Regional Water Quality Control Board